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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/707,210	11/26/2003	Lisa Semeniuk	50709-4	1209
23971	7590	11/15/2005	EXAMINER	
<b>BENNETT JONES</b> C/O MS ROSEANN CALDWELL 4500 BANKERS HALL EAST 855 - 2ND STREET, SW CALGARY, AB T2P 4K7 CANADA				PATEL, NIHIL B
		ART UNIT		PAPER NUMBER
		3743		
DATE MAILED: 11/15/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/707,210	SEMENIUK, LISA
<b>Examiner</b>	<b>Art Unit</b>	
Nihir Patel	3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on September 9<sup>th</sup>, 2005.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) \_\_\_\_\_ is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-31 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All    b)  Some \* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
    Paper No(s)/Mail Date \_\_\_\_\_  
4)  Interview Summary (PTO-413)  
    Paper No(s)/Mail Date. \_\_\_\_\_  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Arguments*

Applicant's arguments filed on September 9<sup>th</sup>, 2005, with respect to claims 1-6, 10-15, 19-24, 28 and 30 have been fully considered and are persuasive. The previous office action dating June 7<sup>th</sup>, 2005 has been withdrawn.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. **Referring to claim 1**, the applicant states that “**...only one attachment point on the oxygen mask...**” it is not possible to wear the mask with only attachment point on the mask.

### *Claim Objections*

Claims 19 and 28 are objected to because of the following informalities: **Referring to claims 19 and 28**, the applicant states that “**...an oxygen mask having only one attachment point on either side of the mask**”. The examiner believes that the applicant does not mean either but each side of the mask. Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1 through 6, 10 through 15, 19 through 24 and 28** are rejected under 35 U.S.C. 103(a) as being unpatentable over Byram (US 6,591,837) in view of Nelson et al. (US 4,960,121). **Referring to claim 1**, Byram discloses the applicant's invention as claimed with the exception of disclosing an adaptor for receiving oxygen supply tubing. Nelson discloses an apparatus that does disclose an adaptor for receiving oxygen supply tubing (**see column 2 lines 45-50**). Therefore it would have been obvious to modify Byram's invention by providing an adaptor that is capable of receiving oxygen tubing or a suitable filter assembly as taught by Nelson in order to provide respiratory gas (oxygen) or clean air to the user.

**Claims 7, 16, 25 and 29** are rejected under 35 U.S.C. 103(a) as being unpatentable over Byram (US 6,591,837) in view of Darrow (US 1,323,217). **Referring to claims 7, 16, 25 and 29**, Byram discloses the applicant's invention as claimed with the exception of disclosing a transverse element (transverse crown strap) that is connected at one end to the upper crown strap and connected at the other end to the lower crown strap. Darrow discloses an apparatus that does disclose a transverse element (transverse crown strap) that is connected at one end to the upper crown strap and connected at the other end to the lower crown strap (**see figure 1**). Therefore it would have been obvious to modify Byram's invention by providing a transverse element (transverse crown strap) that is connected at one end to the upper crown strap and

connected at the other end to the lower crown strap as taught by Darrow in order to prevent the mask from loosing if the patient decided to change head positioning.

Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Byram (US 6,591,837) in view of Norfleet (US 6,418,929). Referring to claim 30, Byram discloses the applicant's invention as claimed with the exception of disclosing that the upper and lower crown straps comprise elastic material. Norfleet discloses an apparatus that does disclose that the upper and lower crown straps comprise elastic material (see column 4 lines 49-53 and figure 3). Therefore it would have been obvious to modify Byram's invention by providing upper and lower crown straps comprise elastic material as taught by Norfleet in order to provide the user with comfortable fitting and so that the user can rotate their head in any desired position without applying force.

Claims 8, 9, 17, 18, 26, 27 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Byram (US 6,591,837) in view of Darrow (US 1,323,217) as applied to claims 7, 16, 25 and 29 above, and further in view of Cruickshank (Patent GB 2 212 725 A). Referring to claims 8, 9, 17, 18, 26, 27 and 31, Byram and Darrow discloses the applicant's invention as claimed with the exception of a transverse crown strap that comprises resilient (elastic) material. Cruickshank discloses an apparatus that does disclose a transverse crown strap that comprises resilient (elastic) material (see figure 1). Therefore it would have been obvious to modify Byram and Darrow inventions by providing a transverse crown strap that comprises resilient (elastic) material as taught by Cruickshank in order to make it easier to put on and remove the mask.

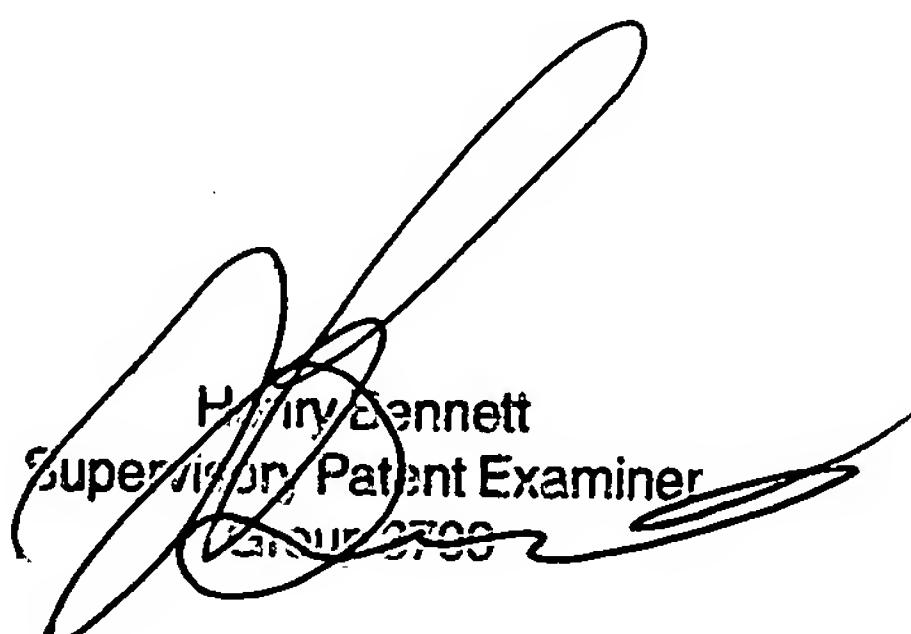
***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nihir Patel whose telephone number is (571) 272-4803. The examiner can normally be reached on 7:30 to 4:30 every other Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Nihir Patel  
November 7<sup>th</sup>, 2005

  
Henry Bennett  
Supervisor, Patent Examiner  
Art Unit 3743